

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 6346 OF 2003.

- 1.Union of India,
- 2.The Chairman, Central Board of Direct
Taxes, New Delhi.
- 3.Additional Commissioner of Income-tax,
Mumbai-20.....

.....Petitioners.

V/s

Shri Binoy Gupta.....

.....Respondent.

Shri P. M. Pradhan, Adv. For the petitioners-Union of India.

Shri S.V. Marne, Adv. For respondent.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRA, JJ.

03/03/2005

Oral Judgment: (Per Palshikar, J.)

By this petition the Union of India has challenged the order passed by the Central Administrative Tribunal, Bombay Bench Bombay allowing the original application filed by the present respondent Shri Binoy Gupta and quashing the departmental proceedings initiated by the department to consider the alleged misconducts committed by the respondent. At the relevant time the respondent was working as Commissioner of Income-tax in Mumbai. He filed an application before the Central Administrative Tribunal of Bombay challenging the order passed on 29.8.2002 by the Secretary, Ministry of Finance, New Delhi. The Union of India started departmental proceedings against the respondent alleging certain misconducts and a notice of

commencement of enquiry was issued to the respondent; charges were framed and allegations and charges were served on the respondent. This charge sheet dated 29.8.2002 was received by the respondent on 13.9.2002 and he therefore challenged the charge sheet before the completion of the departmental enquiry by above mentioned original application before the Central Administrative Tribunal. The Tribunal by its impugned order held that the proceedings were liable to be quashed as the charges framed did not amount to misconduct at all. It is this order which is impugned by Government of India by this petition basically on the ground that the Tribunal acted completely without jurisdiction in interfering with the department enquiry at the initial stage of issuances of charge memo. Shri Pradhan, learned counsel for the petitioner relying on several judgments of the Supreme Court of India pointed out to us that it is confirmed view of law that initiation of departmental proceedings on charges duly framed cannot be questioned by the Tribunal under the Tribunal's act or by this Court under Article 226 of the Constitution. This argument was countered by Shri Marne, learned advocate appearing for the respondent-Commissioner. He also relied on several decisions of the Supreme Court of India and contended that the charges were vague, there was no supporting material, the charges unfounded and therefore the Tribunal had the jurisdiction to interfere. He therefore defended the order of the Tribunal. We have to examine the order of the Tribunal in the light of these submissions.

2. In our opinion, we need not consider all the decisions of the Tribunal, Tribunal's jurisdiction can be considered in view of the judgment of the Supreme Court in the case of **Transport Commissioner, Madras** V/s **A.Radha Krishna Moorthy**, 1995(1)

Supreme Court Services Law Judgments, P.147, where the Supreme Court has held that the Administrative Tribunal has no jurisdiction to go into the truth of the allegations or charges at a stage prior to conclusion of the disciplinary enquiry. Para 7 may be noted:

“7. So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into – more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based, on no evidence i.e. Where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making-process. For the reason the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.”

From the above it will be obvious that the above legal position has been pointed out by Supreme Court of India repeatedly.

3. Reliance was placed on this very judgment by Shri Marne on behalf of the respondent-Commissioner. He pointed out that in spite of observation in para 7 of the said judgment the Supreme Court has proceeded to sustain the order passed by the Tribunal quashing the charges on the ground of vagueness. Assuming that on the ground of

vagueness it may be possible for Tribunal in given case to interfere at a stage prior to conclusion of the enquiry, in the present case, the Tribunal has not pointed out any vagueness in order to imaginative charges so as to clothe the Tribunal with the jurisdiction to interfere. In fact, the Tribunal proceeds to find on fact without the advantage of evidence that the charge was not sustainable. It found how the allegations do not amount or construe a misconduct at all. In para 12 it is observed by the Tribunal as under:

“..... In this conspectus as the gift in the form of acquirement of a plot of land has been bestowed in the name of applicants wife by his father who being a family member and had no official dealing does not constitute a misconduct and on this count the chargesheet issued against applicant is not sustainable.”

It is obvious from the above quoted para of the Tribunal's order that the Tribunal has entered into correctness or otherwise of the chargesheet without awaiting for findings on those charges by appropriate departmental disciplinary authority. Such course according to dicta of the Supreme Court as we understand is not permissible. The Tribunal has therefore clearly acted without jurisdiction while passing the impugned order. In the result therefore the petition must succeed and is allowed. The impugned order is set aside. Taking into consideration the fact that the petitioner may retire soon, the departmental enquiry should be undertaken and completed with utmost speed without compromising the principles of natural justice.